

### REMARKS

The drawings have been amended to show every feature of the invention specified in the claims. Reconsideration and withdrawal of the objection by the examiner to the drawings is requested. New figure 5 has been introduced to show movable member 30 being disposed in the opening to move the ball marker 14 away from the magnetic material as recited in claim 3. No new matter has been introduced.

The examiner is respectfully requested to accept new figure 5 as per the enclosed copy.

### CLAIM REJECTIONS

Claim 3 has been amended and now fully complies with the enablement requirements. The specification in claim 3 defines a movable member disposed in the opening to move the ball marker away from the magnetic material. New figure 5 has been introduced to illustrate the movable member 30 being disposed in the opening 22. As recited on page 4 of the specification, the movable member is moved or pushed while the ball marker 14 is held in the depression 12. The member moves the ball marker away from the magnetic material a sufficient distance to release the ball marker 14 from the depression 12. Reconsideration and withdrawal of the objection under 35 U.S.C. 112 is requested.

The examiner has rejected claims 1, 3 and 5 under 35 U.S.C. 102 as being anticipated by Tate. Reconsideration and withdrawal of the objection by the examiner is respectfully requested.

The claims of this application and in particular, claim 1 has now been amended to include an opening formed through the body at said depression wherein a finger is used to push through the opening to displace the ball marker. This feature is not shown nor rendered obvious by Tate.

Tate discloses a ball marker which comprises an annular disk with a post projecting therefrom. The post extends entirely through the opening in the magnetic material and through the aperture to the rear as shown in figure 1 of Tate. As the user wishes to displace the ball marker, it is ejected from the seat by pressing on the protruding portion of the post to push the shield out of the recessed ball marker seat in the body. When ejecting the ball marker, the finger pushes on the protruding portion of the post but does not extend through the opening. By pushing on the post, this moves the ball marker away from the divot tool and releases the ball marker.

This is a different structure than recited in the claims of the present application. With the divot tool of the present application, the finger is inserted through the opening and the ball marker is pushed away from the depression. There is no post on the ball marker. The finger actually moves through the opening, pushing the ball marker away from the divot tool. Tate does not anticipate claim 1, 3 or 5 of the present application.

The examiner has rejected claims 2, 4 and 5 as being unpatentable over Tate in view of 35 U.S.C. 103. Reconsideration and withdrawal of the objection by the examiner is respectfully requested.

The applicant submits with respect that it would not be obvious to one of ordinary skill in the art to take Tate and to reach the invention as per the amended claims of the present application. The functionality of both inventions is different. Tate uses a ball marker which includes a post and the post is pushed through the opening. The post is used to secure the ball marker to the turf. There is no leading of Tate towards an invention which uses a flat ball marker which can be seen from both sides through the opening through which the finger of the user is pushed to release the ball marker from the depression. In operating Tate, the finger is not pushed through the opening nor is there any suggestion that it should be. The opening in fact is a small opening to accommodate the post which is used to secure the ball marker to the turf. In fact, the desire in Tate is to make the post as small as possible so that it will not interfere with the

operation of the divot tool. This is in contrast to the statement made by the examiner that it would be obvious to increase the size of the opening through which the finger is inserted in the present invention.

There is no teaching or leading from Tate to the invention of the present application. They represent different approaches to the production of a divot tool. By providing an opening through which the finger can be pushed, the present application allows for the visual appearance of the marker from both sides of the divot tool. This particular advantage of the invention of the present application is not present with Tate. For example, by allowing the ball marker to be visually seen through the opening from both sides as recited in the claims of the present application, this allows from possible corporate logos or advertising material to be placed on both sides of the ball marker. This is not possible with Tate since Tate uses a post which is pushed through the opening to release the ball marker thus blocking the view of one side of the ball marker. Also, the ball marker of Tate must be placed with the post in the turf allowing only one surface to be visible. The ball marker and structure of the divot tool of the present invention clearly is advantageous because both sides of the ball marker can be seen and used to mark the ball on the turf which allows for advertising and corporate logos to be placed on both sides which is impossible with Tate.

Therefore, the structure, philosophy and use and advantages of both inventions are different and one does not lead to the teaching of the other. Reconsideration and withdrawal of the objection by the examiner is respectfully requested.

It is submitted that the foregoing amendments are such as to comply with the formal matters raised in the Official Action and this application remains in condition for allowance.

If for any reason the Examiner is of the view that this application is not now in condition for allowance, the Examiner is requested to telephone the undersigned at 1-416-961-5000 so that an interview may be arranged to expedite allowance of this case.

Respectfully submitted,

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